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The Commonwealth of Massachusetts
Executive Office of Public Safety and Security
Fire Safety Commission

Automatic Sprinkler Appeals Board

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JOHN J. MAHAN
CHAIRMAN

MAURICE M. PILETTE
VICE CHAIRMAN

Docket # 2009-12
601 Main Street
North Andover, Massachusetts

AUTOMATIC SPRINKLER APPEALS BOARD DECISION

A) Statutory and Regulatory Framework

This is an administrative appeal held in accordance with Massachusetts General Laws Chapter 30A, Chapter 148, § 26G, and Chapter 6, section 201, relative to a decision of the North Andover Fire Department, ordering the installation of automatic sprinklers in a proposed addition to the Kittredge Elementary School by the School Building Committee of North Andover, Massachusetts (hereinafter referred to as the Appellant). The building, which is the subject of the determination, is located at 601 Main Street, North Andover, MA.

B) Procedural History

By written notice received by the Appellant on December 23, 2009, the North Andover Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in an addition to the Kittredge Elementary School, which the Appellant is proposing to construct at 601 Main Street, North Andover, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. On December 30, 2009, the Appellant filed an appeal of the decision with the Automatic Sprinkler Appeals Board. The Board held a hearing on January 13, 2010, at the Department of Fire Services, Stow, Massachusetts.

Appearing on behalf of the Appellant was James Mealey, Business Administrator/Project Manager, School Building Committee, Town of North Andover. Appearing on behalf of the North Andover Fire Department was Chief William Martineau, Lt. Andrew Melnikas, and North Andover Building Inspector, Gerald Brown.

Present for the Board were: John Mahan, Chairman; Maurice M. Pilette, Vice Chairman; Paul Donga; Thomas Coulombe; Alexander MacLeod; Peter Gibbons; Aime DeNault; and Steven P. Rourke. Peter A. Senopoulos, Esquire, was the Attorney for the Board.

C) Issue(s) to be Decided

Whether the Board should affirm, reverse or modify the determination of the North Andover Fire Department requiring sprinklers in the Appellant's proposed addition in accordance with the provisions of M.G.L. c.148 § 26G?

D) Evidence Received

1. Application for Appeal filed by Appellant
2. Statement in Support of Appeal from Appellant to Board
3. Diagram of Kittredge School property, North Andover, MA from Marshall | Garr, LLC
4. Order of Notice issued by the North Andover Fire Department
5. Request for Proposal to Construct – Kittredge Modular Facility – Kittredge Elementary
6. Photographs of Kittredge Elementary School Property and Buildings (pgs. 1 and 2)
7. Notice of Hearing to Appellant
8. Notice of Hearing to the North Andover Fire Department
9. Copies of two Memoranda that accompany Hearing Notices
10. Letter from Representative David Torrisi in Support of Appellant's Appeal

E) Subsidiary Findings of Fact

- 1) By written notice received by the Appellant on December 23, 2009, the North Andover Fire Department issued a determination to the Appellant, requiring automatic sprinklers to be installed in an addition to the Kittredge Elementary School, which the Appellant is planning to construct at 601 Main Street, North Andover, MA. The determination was issued pursuant to the provisions of M.G.L. c. 148 § 26G. The addition is designed and planned to be used, in general, as classroom and office space. On December 30, 2009, the Appellant filed an appeal of the Fire Department's determination with the Automatic Sprinkler Appeals Board.
- 2) The proposed addition will be a new modular structure consisting of approximately 3,600 sq. ft. It will house three additional classrooms and space to house the Community Programs office. This structure would be added to and connected with the existing school building, which consists of approximately 27,067 sq. ft., by means of a corridor. This corridor will be completely enclosed and features heat and air conditioning. The new modular building shares existing utilities including heat, electrical power, plumbing and will connect to the existing building fire alarm system. The modular unit does not feature independent lavatory facilities. It is planned that occupants of the modular unit will have access to lavatories located in the existing main structure. According to testimony, the new modular addition will not be occupied until the Fall 2010.
- 3) At the hearing the Appellant's representative agreed, by oral stipulation, with the Fire Chief's determination that the new modular facility is, an "addition" to the existing structure, as that term is used in M.G.L. c. 148, s. 26G, as recently amended.

- 4) At the hearing, the Appellant requested that an extension of time be granted to allow the Town's School Building Committee to continue to work with the Town of North Andover to appropriate funding for the required sprinkler installation in the town's Capital Improvement Plan. The Appellant, based upon timing factors of the budget process, suggested that a reasonable period of time to complete the sprinkler installation would be as follows: Plans by the beginning of 2011 and completion by the beginning of 2012. The representatives of the North Andover Fire Department indicated that the suggested extension as presented, seemed reasonable based upon the fiscal circumstances.

F) Ultimate Findings of Fact and Conclusions of Law

- 1) The provisions of M.G.L. c. 148, s. 26G, states, (in pertinent part): "Every building or structure, including any additions or major alterations thereto, which totals, in the aggregate, more than 7,500 gross square feet in floor area shall be protected throughout with an adequate system of automatic sprinklers in accordance with the provisions of the state building code." This law, as stated, reflects recent amendments to the statute enacted by Chapter 508 of the Acts and Resolves of 2008.
- 2) On October 14, 2009, this Board under the authority of M.G.L. c. 30A, s. 8, issued a written guidance document to assist heads of fire departments and building owners to understand the basic requirements of this law. In that document the board detailed the various changes to the old law and provided detailed guidance regarding the type of buildings or structures subject to the enhanced sprinkler protection requirements. The new provisions apply to "the construction of buildings, structures or additions or major modifications thereto, which total, in the aggregate, more than 7,500 gross square feet *permitted after January 1, 2010*". (Sec. 6, Chapter 508 of the Acts of 2008). Therefore, if the date of the issuance of the permit is after January 1, 2010, the enhanced requirements will be applicable.
- 3) In the guidance document, the Board also focused on the provisions of the new law relative to the construction of "additions" to existing buildings. With respect to additions under the prior law, the statute required enhanced sprinkler protection in the "addition only" if the addition consisted of more than 7,500 gross square feet in floor area. However, the new law, effective as of January 1, 2010, now has a specific broad formula to calculate the existing floor area: "For purposes of this section, the gross square footage of a building or structure shall include the sum total of the combined floor areas for all floor levels, basements, sub-basements and additions, **in the aggregate**, measured from the outside walls, irrespective of the existence of interior fire resistive walls, floors and ceilings" (emphasis added).
- 4) The existing school building consists of approximately 27,067 sq. ft. The proposed addition will consist of approximately 3,600 sq. ft. Under the revised law, the building, will now total, in the aggregate, approximately 30,667 sq. feet in floor area based upon the statutorily calculated floor area. This is well over the 7,500 sq. ft. threshold stated in the statute, which triggers the sprinkler installation.
- 5) The Board finds that both the existing building and the planned addition, are subject to the sprinkler requirements of M.G.L. c. 148, s. 26G, as newly revised. At the hearing, the

representative for the Appellant did not provide any factual, technical or legal basis to support a contrary finding and stipulated to such finding by this Board at the hearing. The Board also notes that the planned modular unit is both physically and operationally connected to the existing building. The modular building will share existing utilities including: heat, electrical power, plumbing and the fire alarm. Additionally, the modular unit does not feature independent lavatory facilities. Occupants of the modular unit will have access to lavatories located in the existing building.

- 6) The Board finds that a reasonable extension of time is warranted, based upon factors relating to the local budget process, legally necessary to secure funds to complete the sprinkler installation. These factors were presented at the hearing by the Appellant's representative and were confirmed by the Fire Department representative, who concurred that a reasonable extension is appropriate.

G) Decision and Order

Based upon the evidence and testimony presented at the hearing, the Board hereby **upholds** the determination of the North Andover Fire Department to install sprinklers throughout both the subject existing building and proposed addition in accordance with the requirements of M.G.L. c. 148, § 26G. The Board hereby determines that plans for the installation of an adequate system of automatic sprinklers shall be submitted to the Fire Department no later than December 1, 2010. Said system shall be completed no later than December 1, 2011.

H) Vote of the Board

| | |
|-----------------------------|----------|
| John Mahan, Chairman | In Favor |
| Maurice Pilette, Vice Chair | In Favor |
| Paul Donga | In Favor |
| Thomas Coulombe | In Favor |
| Alexander MacLeod | In Favor |
| Peter Gibbons | In Favor |
| Aime DeNault | In Favor |
| Steven P. Rourke | In Favor |

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I) Right of Appeal

You are hereby advised you have the right, pursuant to section 14 of chapter 30A of the General Laws, to appeal this decision, in whole or in part, within thirty (30) days from the date of receipt of this order.

SO ORDERED,



John Mahan, Chairman

Dated: February 23, 2010

A COPY OF THIS DECISION AND ORDER WAS FORWARDED BY CERTIFIED MAIL, RETURN RECEIPT REQUESTED TO:

James Mealey
School Building Committee
Town of North Andover
1600 Osgood Street
North Andover, Massachusetts 01845

Chief William P. Martineau
North Andover Fire Department
124 Main Street
North Andover, Massachusetts 01845